

REAL ESTATE COMMISSION MEETING

Heber M. Wells Building
Second Floor - Room 210

9:00 a.m.
July 19, 2006

MINUTES

STAFF MEMBERS PRESENT:

Derek B. Miller, Division Director
Jon R. Brown, Enforcement Director
Mark Fagergren, Education/Licensing Director
Dee Johnson, Chief Investigator
Shelley Wismer, Assistant Attorney General
Renda Christensen, Board Secretary
Tiffeni Wall, Education Coordinator
Amanda Orme, Mortgage Education Secretary

COMMISSION MEMBERS PRESENT:

H. Blaine Walker
Bonnie Peretti
Kay Ashton
Doyle "Sam" Sampson

GUESTS

Lance Miller

The July 19, 2006 meeting of the Utah Real Estate Commission began at 9:10 a.m. with Commissioner Walker conducting.

Administrative Law Judge Masuada Medcalf swore in Kay Ashton as the new Commissioner for the Real Estate Commission. Elections were held for a new Chair and Vice Chair, and the new officers are H. Blaine Walker as Chair and Bonnie Peretti as Vice Chair.

Approval of Minutes

The minutes for June 21, 2006 were approved as written.

DIVISION REPORTS

DIRECTOR'S REPORT – Derek Miller

Director Miller welcomed Kay Ashton as the new Commissioner. Commissioner Ashton was formerly the Alternative Commissioner on the Mortgage Commission. The other new Commissioner should be approved by the Legislature and should be sworn in at the next meeting.

Director Miller brought up the T.I.C. draft rule and discussed the changes made after

the last meeting. The first change was the term "investor" to "purchaser". The other change is the term asset managers and property managers and just kept property managers. The last change was where the language had prohibited an affiliation between a sponsor and the master lease tenant, and also prohibited the affiliate relationship between the property manager and the sponsor. The change is that it should not be prohibited, just disclosed.

Chair Walker said there is a distinct difference between property manager and asset manager and that both should be included in the rule.

Director Miller said there is another change in reference to disclosing financial statements of the master lease tenant. Some of the language proposed in the public comment period would include a change to say in cases where the master lease tenant was created as a special purpose entity, created for a specific transaction, that what matters is the financial statement of the owner. Chair Walker said the proposal made by Ray Quinney & Nebeker, the other concern was the protection of the public so they would know the financial capabilities and the background of owner, because they are now handling the money from the sub-tenants.

Director Miller said the Division is looking for an approval of this draft with two modifications. The first is to reinsert the language on the asset manager so it includes what the original language was, and the second modification would be to Section 11.2.2 which would include this clarification of special purpose entities, that the disclosure should be of the owner of that special purpose entity and not the financial statement of the entity itself. It would not include an exemption for the triple net lessees. He asked the Commission for a vote to approve us moving forward. Ms. Wismer said the two modifications would have to be made and then re-posted. A motion was made and passed unanimously to authorize the Division to make those two changes and start the rulemaking process.

INVESTIGATIONS REPORT – Jon Brown

Mr. Brown reported in the month of June the Division received 55 written complaints, 28 complaints were screened (no case opened), 28 new cases opened for investigation, 36 cases were closed, leaving 155 open cases.

A breakdown of the 55 written complaints are as follows: 7 were agency issues, 3 were for earnest money or trust account disputes, 6 were for failure to supervise, 6 were for loan fraud cases, 9 were breach of fiduciary duty, 4 were property management issues, 9 were for unlicensed activity, 5 were for misrepresentations of facts of the property or the listing and errors in it, and 6 were for blind ads.

EDUCATION/LICENSING REPORT – Mark Fagergren

Mr. Fagergren announced the testing company used by the Division currently use was bought out. The company was called Promissor and is now called Pearson Vue. The only significance to us is the company who bought Promissor is a company that does a lot of university and college testing, so they are familiar with the testing process.

Pearson Vue talked favorably about having a test center in Cedar City.

Pearson Vue completed a national survey within the last six months to make sure the general part of the real estate exam was reflective of real life real estate agents and brokers activities. They contacted real estate agents throughout the country and tracked their duties and knowledge. The test should accurately measure what the agents and brokers actually do every day.

On August 9 and 10, Pearson Vue will be coming out for a test development workshop where all of the state portion of the exam will be reviewed. Individuals in approximately six counties are being contacted now to see if they are willing to take two days of their time to look at questions, and write and evaluate questions for the state portion of the exam that reflect the statutes, rules and practices of real estate licensees. Chair Walker would like to see someone from Enforcement participate to let Pearson Vue know where we are seeing problems on an everyday basis. Vice Chair Peretti asked how soon the changes would be seen on the test. Mr. Fagergren said each question needs to be validated and reviewed, and each question must be placed in a sample test. He said the process is longer because of the scientific nature involved.

Mr. Fagergren discussed the draft rule for new agent training. Section 3.6.1.1.1 speaks about continuing education requirements for new licensees. During a licensee's first term, the licensee's 12 hour continuing education requirement shall consist of the Division's 3 hour core course and a 9 hour live new agent course. The Commission shall approve a standard course outline for the new agent course. The 9 hours will be specifically broken down so all schools who choose to teach this course will be teaching a consistent curriculum. A motion was made and passed to accept Mr. Fagergren's recommendations. A second motion was made to accept the draft in the rulemaking process.

Mr. Fagergren brought up distance education and some points he wanted to cover. In the past distance education courses had to be ARELLO certified, but the rule was changed to say no more than half could be passive, the remainder had to be live classes. At a school, if the person watched a video with an instructor present, it was considered as live credit. This raised the question that if someone watched the same course at the Board, why wouldn't it be considered as live, or should both be considered as passive. Some schools want to send out videos for people to watch at home, which would be considered distance education, and then have them pass a test to show they had watched the video. The way this stands now, it is very confusing. Mr. Fagergren would like to see the real estate distance education follow the mortgage education. Currently, a school can submit a course for distance education and the course is monitored to have constant interaction with the person. If a few minutes go by without some sort of response from the person, it will kick them out of the system and they will have to start over again. The main concern is the quality of education. He would like to have a public hearing on distance education for continuing education for real estate licensees. He would like to have the schools and other interested parties

attend and discuss continuing education for distance education. A motion was passed to hold a public hearing as requested by Mr. Fagergren. The public hearing will probably be scheduled for the September meeting. The date for the September meeting has been changed from September 20 to September 13 because of the conflicting schedule with UAR.

The newsletter is at the printer and should be sent out next week.

LICENSE HEARINGS: MAY BE CLOSED TO PUBLIC

- 10:15 Stephen Simister – Application for License
Dix Jarman, Former Employer
Dr. Kent Simister, Father
Pat Simister, Mother
Julie Simister, Wife
- 11:20 Jeremy Olson – Application for License
Lynn Muirbrook, Principal Broker, Exit Realty Wasatch
- 11:55 Tiffany Crippen – Application for License
- 12:30 Evan Greg Stevens – Application for License
Jennifer Stevens, Wife
- 1:27 Peter Karapanos – Application for License
Stanley S. Adams, Attorney
Arnold Hansen, Probation Officer

A motion was made to go into an Executive Session from 2:08 p.m. to 3:15 p.m.

Review of Stipulations

Elizabeth A. Mahon
Brian H. Lewis
Michael Earnhart
Tracy Ryan
John W. Wallace
David R. Taylor

RESULTS OF EXECUTIVE SESSION

Informal Hearings:

Stephen Simister – Granted on probation for the first term of the license. He must give any broker he is affiliated with a copy of his order.

Jeremy Olson – Granted on probation for the first term of the license. He must give

any broker he is affiliated with a copy of his order.

Tiffany Crippen – Denied.

Evan Greg Stevens – Granted and immediately suspended until he provides proof to the Division he is no longer on probation. His license will then be on probation for the first term of his licensure, and he must provide a copy of his order to any broker he will be affiliated with.

Peter Karapanos – Granted on probation for the first term of the license. He must give any broker he is affiliated with a copy of his order.

Stipulations:

Elizabeth A. Mahon - Approved

Brian H. Lewis - Approved

Michael Earnhart - Approved

Tracy Ryan - Approved

John W. Wallace - Approved

David R. Taylor - Approved

Jonathan L. Hopkin - Approved

A motion was made and accepted to adjourn the meeting at 3:17 p.m.